

## CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 16<sup>th</sup> day of February, 2018, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the DEPARTMENT OF PUBLIC WORKS (hereinafter referred to as "Government") and CHEM CHEK CO. INC., (hereinafter referred to as "Contractor")

### WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to PROVIDE THE ADMINISTRATIVE SERVICES IN CONNECTION WITH ITS DRUG AND ALCOHOL TESTING PROGRAM to satisfy the rules and regulations of the Federal Transit Administration (FTA) for the public transportation system in the United States Virgin Islands (VITRAN), and the Department of Public Works, which duties and responsibilities are more particularly described in Addendum I (Scope of Work), Addendum II (Compensation), Addendum III (General Provisions) attached hereto; and

WHEREAS, the Contractor represents that it is willing and capable of providing such services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

### 1. SERVICES/THIRD PARTY ADMINISTRATOR

The Contractor will provide the administrative services described in Addendum I (Scope of Work) attached hereto and made a part of this contract.

### 2. TERM

This Contract shall commence upon the execution of this Contract by the Governor of the Virgin Islands and shall terminate SEVEN HUNDRED AND THIRTY DAYS (730) days thereafter with a TWO (2) year renewal option.

### 3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Work), agrees to pay Contractor the sum of FORTY-LB SEVEN THOUSAND DOLLARS (\$47,000.00) in accordance with the provisions set forth in Addendum II (Cost Proposal) attached hereto and made a part of this contract. The Contract Compensation amount is for 730-day Term. The compensation will be an amount not to exceed TWENTY-THREE THOUSAND FIVE HUNDRED DOLLARS (23,500.00) annually.

### 4. TRAVEL EXPENSES

Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation,

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subsistence, lodging and other travel expenses, while in travel status, for trips which have advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) per year. *LB*

## **5. PROFESSIONAL STANDARDS**

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

## **6. DOCUMENTS, PRINTOUTS, ETC.**

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

Upon termination of this agreement, and upon written request of the Government, Contractor agrees that it will provide the Government electronic copies of all then-existing database information, files and materials related to the Services, in a Microsoft or office standard format. Furthermore, if the Services include Medical Review officer Services ("MRO"), Contractor will facilitate and assist Government with the transfer of Government's substance abuse testing records to a new Medical Review Officer (MRO) within ten working days as required by applicable federal regulations (the Government acknowledge that Contractor may keep copies of such information as required under applicable federal and state laws).

## **7. LIABILITY OF OTHERS**

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

## **8. ASSIGNMENT**

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government.

## **9. INDEMNIFICATION**

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected

to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

#### **10. INDEPENDENT CONTRACTOR**

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

#### **11. GOVERNING LAW**

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands. The procurement under this contract is supported by the United States Federal Transit Administration (FTA). When so funded the contract shall be subject to all rules and regulations promulgated pursuant thereto

#### **12. WAIVERS AND AMENDMENTS**

No waiver, modification or amendment of any term condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

#### **13. ENTIRE AGREEMENT**

This agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

#### **14. RIGHT TO WITHHOLD**

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

## 15. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

## 16. TERMINATION

Either party will have the right to terminate this Contract with or without cause on (30) days written notice to the other party specifying the date of termination.

## 17. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the (30) day notice.

## 18. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

## 19. CONFLICT OF INTEREST

- (a) Contractor covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
- (b) Contractor further covenants that it is:
  - (1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
  - (2) a territorial officer or employee and, as such, has:
    - (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
    - (ii) not made, negotiated or influenced this Contract, in its official capacity;
    - (iii) no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

## 20. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor

**21. NOTICE**

Any notice required to be given by the Terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

**GOVERNMENT**

Lloyd T. Bough, Jr.  
Commissioner  
Department of Property and Procurement  
Sub Base, Building No. 1, Third Floor  
St. Thomas, VI 00802

Nelson M. Petty, Jr.  
Commissioner Nominee  
Department of Public Works  
8244 Sub Base  
St. Thomas, VI 00802

**CONTRACTOR**

Ms. Lori Bauske  
Chief Executive Officer (CEO)  
Chem Chek Co., Inc.  
1750 Alma Road #108  
Richardson, Texas, 75081

**22. LICENSURE**

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

**23. PERFORMANCE REQUIRED BY THE GOVERNMENT**

- (a) The Government will name a limited number of qualified individuals to coordinate the Substance Abuse program and notify the Contractor of such individuals.
- (b) The Government agrees to obtain and maintain written releases from each employee and/or applicant for employment, authorizing the Contractor as the Government "Designated Agent" to receive their individual drug test results directly from the drug testing laboratory administering such tests on the Government's behalf. The Government will not utilize services provided under this Agreement for employees/applicants who have not signed such releases.
- (c) The Government agrees to require all individuals subject to substance abuse testing under the terms of this Agreement, to execute all other forms required by the Contractor or designated test facility for the implementation and administration of the Government's Substance Abuse Program.
- (d) The Government agrees to maintain a facsimile machine or other confidential facility, in a secure and enclosed limited access area, for the purpose of receiving results of Substance abuse tests, as required by the government's Substance Abuse program and State or local Regulations when applicable.
- (e) When applicable, the Government will provide the Contractor with a current list of all individuals subject to random drug testing to be enrolled in the Government's random pool, and a

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list of all the Government locations. The Government is under duty to keep such lists updated and current. The Government agrees that the Contractor's duty to administer random tests only extends to individuals whose names appear in these lists. The Government agrees to provide the Contractor with further information deemed necessary to satisfactorily perform its substance abuse testing service. The Government agrees to ensure that all random tests are performed.

(f) With respect to personally identifiable information regarding Government, the Parties further agree as follows: Contractor has adopted the "Chem Chek Co., Inc.'s Privacy Principles" ("Principles") recognizing the importance of appropriate privacy protections for consumer data and Government agrees that Government (including directors, officers, employees or agents) will comply with the Principles or Government's own comparable privacy principles, policies, or practices. Chem Chek Co., Inc.'s Privacy Principles are available at [www.chemchekinc.com](http://www.chemchekinc.com).

(g) If at any time during the term hereof, Government changes its legal name or its address, as set forth in this Agreement, Government shall immediately notify Contractor in writing of such change.

## **24. OTHER PROVISIONS**

Addenda attached hereto are a part of this Contract and are incorporated herein by reference.

## **25. DEBARMENT CERTIFICATION**

By execution of this contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

## **26. FALSE CLAIMS**

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

## **27. NOTICE OF FEDERAL FUNDING**

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

**WITNESSES:**

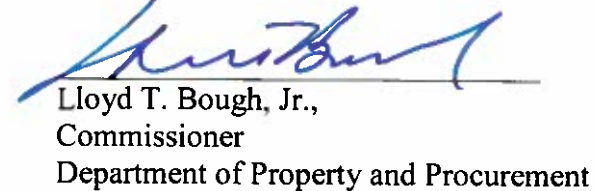
**GOVERNMENT OF THE VIRGIN ISLANDS**



  
Nelson M. Petty, Jr.  
Department of Public Works

10/13/17  
Date



  
Lloyd T. Bough, Jr.,  
Commissioner  
Department of Property and Procurement

11/9/18  
Date

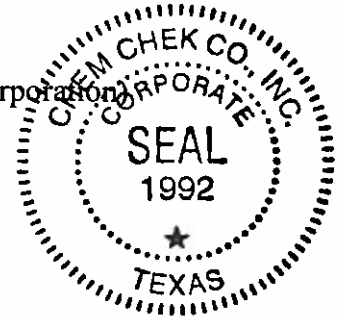


**CONTRACTOR**

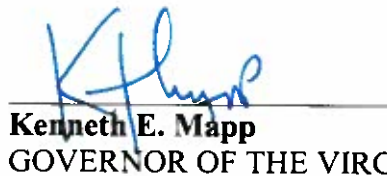
  
Lori Bauske, CEO  
Chem Chek Co., Inc.

7/6/17  
Date

(Corporate seal, if Contractor is a corporation)

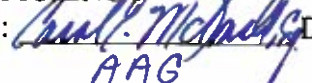


**APPROVED:**

  
Kenneth E. Mapp  
GOVERNOR OF THE VIRGIN ISLANDS

Date: 2/16/18

**APPROVED AS TO LEGAL SUFFICIENCY**

DEPARTMENT OF JUSTICE BY:  Date 2/7/18  
AAG

**PURCHASE ORDER NO.**

**ACCOUNT CODE NO.**

Contract No. **P004DPWT18**  
RFP-027-2016 (P)